

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

James H. Hodson, III,
Petitioner, : vs. : C.A. No. 05-92 Erie

Marilyn Brooks,
Respondents, : :

MOTION TO RECONSIDER ORDER GRANTING EVIDENTIARY HEARING

AND NOW, this 18th day of September, 2006 comes the Commonwealth of Pennsylvania, by Paula C. DiGiacomo, Esquire, First Assistant District Attorney of Crawford County, Pennsylvania, and files this motion, wherein we request the Court to reconsider the order granting an evidentiary hearing and that the hearing scheduled for October 11, 2006, at 10:00 a.m. be cancelled. In support of this motion it is represented as follows:

1. On April 24, 2006, the Commonwealth received an electronic filing of Defendant's request for an evidentiary hearing.
2. It is the Commonwealth's understanding that this Court issued an order on June 6, 2006, requesting the Commonwealth's response consenting or objecting to an evidentiary hearing. The Commonwealth did not receive this.
3. The Commonwealth did not receive a text order in another case in June as a result of the Court's electronic filing system being down. The Commonwealth did request the Court to confirm text filings in that time period to make sure none were missed by the Commonwealth, however, none were indicated to the Commonwealth.

4. As a result, the Commonwealth did not consent or object to an evidentiary hearing being set.

5. The Commonwealth seeks the Court to allow the Commonwealth to object to an evidentiary hearing being set.

6. The Commonwealth does not believe an evidentiary hearing should be set because the Petition for Habeas Corpus Relief should be summarily dismissed or denied because said petition was filed beyond the Federal Habeas Corpus limitations found in 28 U.S.C. §2244(d), and because the Petitioner has failed to exhaust his State Court remedies.

7. Petitioner's second State Court pro se PCRA Petition should not be deemed to have tolled the statute of limitations.

Wherefore, it is respectfully requested that the order granting an evidentiary hearing be denied and that the hearing scheduled for October 11, 2006, at 10:00 a.m. be cancelled.

Respectfully submitted,


PAULA C. DIGIACOMO, ESQ.
First Assistant District Attorney